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FEE EXEMPT – GOV. CODE § 6103

MAYRA ALVAREZ, an Individual

Plaintiff,

VS.

JOSE HUIZAR, an individual; CITY OF LOS ANGELES, a municipality; and DOES 1-10, inclusive,

Defendants.

1 **TO THE HONORABLE COURT, PLAINTIFF AND HER ATTORNEYS OF RECORD:**

2 Defendant City of Los Angeles ("Defendant City") for itself and no other party, hereby answers
3 the allegations contained within the verified Complaint for Damages ("Complaint") filed by Plaintiff
4 Mayra Alvarez ("Plaintiff") pursuant to the provisions set forth under Sections 431.30 and 446 of the
5 California Code of Civil Procedure, as follows:

6
7 **GENERAL DENIAL**

8 1. Under the provisions of Sections 431.30(d) and (f) of the California Code of Civil
9 Procedure, Defendant City denies generally and specifically each and every allegation contained in the
10 Complaint and denies that Plaintiff has sustained any injury or loss by reason of any act or omission on
11 the part of Defendant City, or the agents, servants, or employees of the City of Los Angeles, and denies
12 that Plaintiff has been damaged in the amount alleged in the Complaint or in any other amount
13 whatsoever.

14
15 **AFFIRMATIVE DEFENSES**

16 **FIRST AFFIRMATIVE DEFENSE**

17 **(Dismissal of Fourth Cause of Action)**

18 1. By stipulation, Plaintiff agreed that she cannot maintain her Fourth Cause of Action, a
19 common law claim for "Wrongful Termination in Violation of Public Policy," against a public entity
20 employer and on that basis, dismissed the Fourth Cause of Action with prejudice against Defendant
21 City.

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23 **SECOND AFFIRMATIVE DEFENSE**

24 **(Dismissal of Claim For Punitive Damages)**

25 2. By stipulation, Plaintiff agreed that she is not entitled to recover punitive damages against
26 Defendant City.

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1 **THIRD AFFIRMATIVE DEFENSE**

2 **(Failure to State a Cause of Action)**

3 3. Plaintiff's Complaint, and each cause of action set forth therein, are barred in whole or in
4 part in that Plaintiff fails to set forth facts sufficient to constitute a cause of action against Defendant
5 City.

6
7 **FOURTH AFFIRMATIVE DEFENSE**

8 **(Outside Course and Scope of Employment)**

9 4. Plaintiff's Complaint, and each cause of action set forth therein, are barred in whole or in
10 part because the alleged misconduct by certain individual or individuals occurred outside the course and
11 scope of their employment, if any, as supervisor with Defendant City and therefore, Defendant City is
12 not vicariously and strictly liable for the alleged misconduct. Defendant City also did not know nor
13 should have known of the alleged misconduct in order to take immediate, corrective action.

14
15 **FIFTH AFFIRMATIVE DEFENSE**

16 **(Statute of Limitations)**

17 5. Plaintiff's Complaint, and each cause of action set forth therein, are barred in whole or in
18 part by the applicable statutes of limitations, including, but not limited to, California Code of Civil
19 Procedure §§ 340 and 335.1 and California Government Code §§ 911.2, 12960, and 12965.

20
21 **SIXTH AFFIRMATIVE DEFENSE**

22 **(Laches)**

23 6. Plaintiff's Complaint, and each cause of action set forth therein, are barred in whole or in
24 part by the doctrine of laches.

25
26 **SEVENTH AFFIRMATIVE DEFENSE**

27 **(Failure to Exhaust Administrative Remedies)**

28 7. Plaintiff's Complaint, and each cause of action set forth therein, are barred in whole or in
part in that Plaintiff has failed to exhaust the necessary administrative and/or judicial remedies.

1 **EIGHTH AFFIRMATIVE DEFENSE**

2 **(Failure to File Timely Administrative Complaint)**

3 8. Plaintiff's Complaint, and each cause of action set forth therein, are barred in whole or in
4 part in that Plaintiff has failed to file a timely complaint pursuant to California Government Code
5 § 12960(d) and the California Tort Claims Act pursuant to Government Code §§ 810-996.6.
6

7 **NINTH AFFIRMATIVE DEFENSE**

8 **(Failure to Exhaust Internal Procedures)**

9 9. Plaintiff's Complaint, and each cause of action set forth therein, are barred in whole or in
10 part in that Plaintiff failed to exhaust the internal procedures that were available to resolve the claims
11 alleged therein.
12

13 **TENTH AFFIRMATIVE DEFENSE**

14 **(Failure to Exhaust Judicial Remedies)**

15 10. Plaintiff's Complaint, and each cause of action set forth therein, are barred by Plaintiff's
16 failure to exhaust judicial remedies available after seeking any administrative remedies.
17

18 **ELEVENTH AFFIRMATIVE DEFENSE**

19 **(Uncertainty)**

20 11. Plaintiff's Complaint, and each cause of action set forth therein, are barred in whole or in
21 part in that Plaintiff's Complaint is uncertain and the basis for its causes of action cannot be ascertained
22 from the allegations stated therein.
23

24 **TWELFTH AFFIRMATIVE DEFENSE**

25 **(Immunity of Public Entity)**

26 12. Plaintiff's Complaint, and each cause of action set forth therein, are barred in whole or in
27 part by reason of Defendant City's immunity from liability and punitive damages under, *inter alia*,
28 California Government Code §§ 815 *et seq.*, 815.2, 815.3, 818.2, 818.8, 820.2, 820.4, 820.6, 820.8, 821,
821.6, 822.2, 825, and California Civil Code § 47.

1 **THIRTEENTH AFFIRMATIVE DEFENSE**

2 **(Failure to Mitigate)**

3 13. Plaintiff's Complaint, and each cause of action set forth therein, are barred in whole or in
4 part in that Plaintiff has failed to mitigate any of the damages or injuries she claims to have suffered
5 from the acts or conduct of Defendant City or its representatives.
6

7 **FOURTEENTH AFFIRMATIVE DEFENSE**

8 **(Waiver)**

9 14. Plaintiff's Complaint, and each cause of action set forth therein, are barred in whole or in
10 part in that Plaintiff has waived and/or relinquished the claims or causes of action being asserted in this
11 action.
12

13 **FIFTEENTH AFFIRMATIVE DEFENSE**

14 **(Immunity for Discretionary Acts)**

15 15. Plaintiff's Complaint, and each cause of action set forth therein, are barred in whole or in
16 part in that neither a public entity nor a public employee is liable for any injury resulting from his or her
17 act or omission which was the result of the exercise of the discretion vested in them pursuant to
18 California Government Code §§ 815(b), 815.2(b), 815.3, 818.2, 818.8, 820.2, 820.4, 820.6, 820.8, 821,
19 821.6, and 822.2, and Civil Code § 47.
20

21 **SIXTEENTH AFFIRMATIVE DEFENSE**

22 **(Performance of Official Duty)**

23 16. Plaintiff's Complaint, and each cause of action set forth therein, are barred in whole or in
24 part in that it is presumed that the official duty has been regularly performed by Defendant City in the
25 absence of contrary proof pursuant to California Evidence Code § 664.
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1 **SEVENTEENTH AFFIRMATIVE DEFENSE**

2 **(Emotional Distress Barred by Workers' Compensation Act)**

3 17. Plaintiff's Complaint, and each cause of action set forth therein, are barred to the extent
4 that Plaintiff seeks recovery for emotional distress arising out of the normal course and scope of
5 employment, because such claim is barred by the exclusivity provisions of the California Workers'
6 Compensation Act and cases interpreting those statutes.
7

8 **EIGHTEENTH AFFIRMATIVE DEFENSE**

9 **(Avoidable Consequences Doctrine)**

10 18. Without admitting that Plaintiff has sustained any damages or detriment, or that
11 Defendant City is liable to Plaintiff in any manner whatsoever, Defendant City is informed and believes
12 and thereon alleges that Plaintiff unreasonably failed to take advantage of preventative and corrective
13 opportunities, thereby precluding and/or limiting Plaintiff's recovery, if any, and further, that Defendant
14 City exercised reasonable care to preclude and correct the behavior complained of by Plaintiff, if any.
15

16 **NINETEENTH AFFIRMATIVE DEFENSE**

17 **(Frivolous Claims)**

18 19. Plaintiff's Complaint, and each cause of action set forth therein, are frivolous and known
19 by Plaintiff to be frivolous and without foundation in fact or law. Defendant City is informed and
20 believes and thereon alleges that this lawsuit is being pursued in bad faith for vexatious reasons for the
21 purpose of harassing Defendant City. Accordingly, Defendant City is entitled to attorney's fees and
22 other appropriate costs and expenses.
23

24 **TWENTIETH AFFIRMATIVE DEFENSE**

25 **(Failure to Comply with City of Los Angeles Charter)**

26 20. Plaintiff's Complaint, and each cause of action set forth therein, are barred to the extent
27 they are based upon alleged unlawful termination of employment in that Plaintiff has failed to file an
28 appropriate application pursuant to § 1016(c) of the Los Angeles City Charter and an appropriate
demand for reinstatement and claim for compensation under § 1017 of the Los Angeles City Charter.

1 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

2 **(Privileged Conduct)**

3 21. The Complaint, and each cause of action set forth therein, fails in that any purported
4 conduct of Defendant City was privileged and Defendant City was justified in engaging in such conduct.
5

6 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

7 **(Good Faith)**

8 22. At all times mentioned, Defendant City acted in good faith.
9

10 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

11 **(Constitutional Acts)**

12 23. At all times mentioned, Defendant City acted in accordance with the Constitution of the
13 United States and the Constitution of the State of California and all state and local laws relative thereto.
14

15 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

16 **(Standing)**

17 24. The action is barred for lack of standing to sue.
18

19 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

20 **(Res Judicata)**

21 25. Plaintiff's claims for relief for barred, in whole or in part by the doctrine of res judicata.
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23 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

24 **(Collateral Estoppel)**

25 26. Plaintiff's claims for relief are barred, in whole or in part, by the doctrine of collateral
26 estoppel.
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1 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

2 **(Legitimate Business Necessity/Job Relatedness)**

3 27. Plaintiff's Complaint, and each cause of action set forth therein, are barred in whole or in
4 part in that any action alleged or perceived as adverse by Plaintiff took place because of legitimate, non-
5 retaliatory, non-discriminatory, business necessity, and/or job-related reasons.

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7 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

8 **(Public Entity Immunity for Acts of Others)**

9 28. Plaintiff's Complaint, and each cause of action set forth therein, are barred in whole or in
10 part in that Defendant City is immune from liability on the state law claims for any injury caused by the
11 act or omission of a person other than its employee pursuant to Cal. Government Code §§ 815(b),
12 815.2(b), and 820.8.

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14 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

15 **(Failure to Notify)**

16 29. Plaintiff's Complaint, and each cause of action set forth therein, are barred in whole or in
17 part in that Plaintiff failed to comply with the remedial processes available to her by the City of Los
18 Angeles and/or Defendant City took prompt remedial action upon notice of all of Plaintiff's alleged
19 claims.

20
21 **THIRTIETH AFFIRMATIVE DEFENSE**

22 **(Intervening and Superseding Cause)**

23 30. The damages sustained by Plaintiff, if any, were caused, in whole or in part, by acts or
24 omissions of third parties, which constituted a superseding and intervening cause for Plaintiff's alleged
25 injuries, and accordingly, any recovery against Defendant City is barred in whole or in part.

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1 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

2 **(Fault of Another)**

3 31. Any and all injuries allegedly suffered by Plaintiff are the direct and proximate result of
4 negligence, recklessness, or other wrongful conduct on the part of third parties. In the event of any
5 judgment or recovery against Defendant City, Defendant City is entitled to a reduction of any such
6 judgment or recovery by Plaintiff in direct proportion to the percentage of comparative fault attributable
7 to other third parties.

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9 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

10 **(After-Acquired Evidence)**

11 32. Defendant City's refusal to hire Plaintiff for a position or other employment decisions
12 that affected Plaintiff may be based on evidence acquired in the course of discovery which may justify
13 Defendant City's decisions as lawful.

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1 WHEREFORE, Defendant City prays as follows:

- 2 1. That Plaintiff takes nothing by way of this action;
- 3 2. That Plaintiff's entire action be dismissed with prejudice;
- 4 3. That Plaintiff's request for attorney's fees and/or costs be denied in their entirety;
- 5 4. That Defendant City be awarded attorneys' fees incurred in this action pursuant
- 6 to, *inter alia*, California Government Code § 12965(b) and
- 7 California Code of Civil Procedure §§ 128.5 and 128.7;
- 8 5. That Defendant City recover costs incurred in this action; and
- 9 6. For such other and further relief as the Court deems just and proper.

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12 DATED: December 19, 2018

13 Respectfully submitted,

14 MICHAEL N. FEUER, City Attorney
15 THOMAS H. PETERS, Chief Assistant City Attorney
16 ERIC BROWN, Managing Assistant City Attorney
17 KELLY P. WELCH, Deputy City Attorney

18
19 By


KELLY P. WELCH

20 Deputy City Attorney

21 Attorneys for Defendant CITY OF LOS ANGELES

1 **PROOF OF SERVICE**

2 **MAYRA ALVAREZ v. CITY OF LOS ANGELES, et al. – LASC CASE No. 18STCV01722**

3 I, Julie A Martinez, the undersigned, say: I am over the age of 18 years and not a party to the within action
4 or proceeding. My business address is, 200 North Main Street, 7th Floor, City Hall East, Los Angeles, California
5 90012.

6 On December 20, 2018, I served the foregoing documents described as **DEFENDANT CITY OF
7 LOS ANGELES' ANSWER TO PLAINTIFF MAYRA ALVAREZ'S VERIFIED COMPLAINT
8 FOR DAMAGES**, on all interested parties in this action by placing copies thereof enclosed in a sealed
9 envelope addressed as follows:

10 **Terrence Jones, Esq.**
11 LAW OFFICES OF TERRENCE JONES
12 6737 Bright Avenue, Suite B6
13 Whittier, CA 90601
14 Tel.: 213.863.4490
15 Email: terrence@jonesonlaw.com
16 *Attorney for Plaintiff*

- 17 [] BY MAIL - I deposited such envelope in the mail at Los Angeles, California, with first class postage
18 thereon fully prepaid. I am readily familiar with the business practice for collection and processing of
19 correspondence for mailing. Under that practice, it is deposited with the United States Postal Service on
20 that same day, at Los Angeles, California, in the ordinary course of business. I am aware that on motion
21 of the party served, service is presumed invalid if postage cancellation date or postage meter date is more
22 than one (1) day after the date of deposit for mailing in affidavit; and/ or
- 23 [] BY ELECTRONIC SERVICE: Based on a court order or an agreement of the parties to accept service by
24 electronic transmission, I caused the documents to be sent to the persons at the electronic notification
25 addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic
26 message or other indication that the transmission was unsuccessful.
- 27 [X] **BY PERSONAL SERVICE** – () I delivered by hand, or (X) I caused to be delivered via messenger
28 service, such envelope to the offices of the addressee with delivery time prior to 5:00 p.m. on the date
specified above.
- [] BY FACSIMILE TRANSMISSION - I caused the document to be transmitted to the offices of the
addressee via facsimile machine at telephone number on the date and time specified on the Transmission
Report. The document was sent by fax from telephone number (213) 978-8216 and the transmission was
reported complete and without error. A true copy of the Transmission Report is attached to the mailed or
personal or both proof(s) of service.
- [] BY OVERNIGHT COURIER - I deposited such envelope in a regularly maintained overnight courier
parcel receptacle prior to the time listed thereon for pick-up. Hand delivery was guaranteed by the next
business day.

29 I declare that I am employed in the office of a member of the bar of this court at whose direction the
30 service was made. I declare under penalty of perjury that the foregoing is true and correct. Executed on
31 December 20, 2018, at Los Angeles, California.

32 
33 JULIE A MARTINEZ